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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,749	04/20/2000	Rian R. Maloney	021768.1087	9040

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EXAMINER

BHATNAGAR, ANAND P

ART UNIT PAPER NUMBER

2623

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/558,749

Applicant(s)

MALONEY, RIAN R.

Examiner

Anand Bhatnagar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 and 43-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-18, 20-28, 31-39, 41, and 43-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/05/03&amp;02/11/02</u> . | 6) <input type="checkbox"/> Other: _____  |

***Response to Arguments***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/29/04 has been entered and made of record.
2. Applicant's response (paper 10/01/04) to the restriction given on 08/26/04 has been entered and made of record. Applicant has elected Group I (claims 1-41 and 43-50) with traverse. Applicant has canceled claims 51-59.
3. Applicant's arguments, see amendment remarks, filed 04/29/04, with respect to claims 1-41 and 43-50 have been fully considered and are persuasive. The 35 USC 102(e) rejection of claims 1, 2, 4, 8, 11, 13, 17, 20, 21, 23, 27, 32, 34, 38, 42, 44, and 48 and the 35 USC 103(a) rejection of claims 3, 5-7, 9, 10, 12, 14-16, 18, 19, 22, 24-26, 28-30, 33, 35-37, 39, 40, 43, 45-47, 49, and 50 have been withdrawn. Examiner refers to the new rejection below.

***Double Patenting***

4. Claims 1-9, 11-19, 20-28, 31-39, 41, and 43-49 of this application conflict with claims 5-13 of Application No. 6,608,274. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting

claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1, 11, 20, 31, and 41 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 5 of prior U.S. Patent No. 6,608,274. This is a double patenting rejection.

Claims 2, 21, and 32 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 6 of prior U.S. Patent No. 6,608,274. This is a double patenting rejection.

Claims 3, 12, 22, 33, and 43 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 7 of prior U.S. Patent No. 6,608,274. This is a double patenting rejection.

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Claims 4, 13, 23, 34, and 44 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 8 of prior U.S. Patent No. 6,608,274. This is a double patenting rejection.

Claims 5, 14, 24, 35, and 45 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 9 of prior U.S. Patent No. 6,608,274. This is a double patenting rejection.

Claims 6, 15, 25, 36, and 46 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 10 of prior U.S. Patent No. 6,608,274. This is a double patenting rejection.

Claims 7, 16, 26, 37, and 47 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 11 of prior U.S. Patent No. 6,608,274. This is a double patenting rejection.

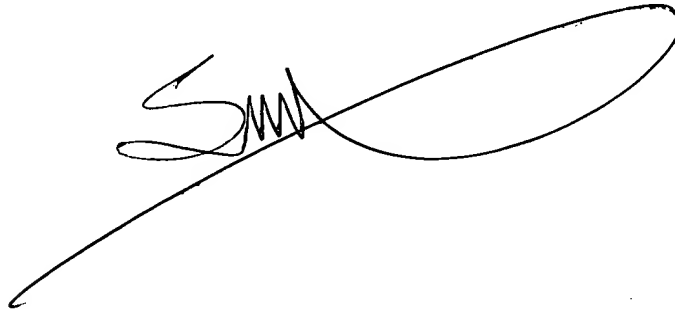
Claims 8, 17, 26, 37, and 47 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 12 of prior U.S. Patent No. 6,608,274. This is a double patenting rejection.

Claims 9, 18, 28, 39, and 49 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 13 of prior U.S. Patent No. 6,608,274. This is a double patenting rejection.

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**Contact Information**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anand Bhatnagar whose telephone number is (703) 306-5914, whose supervisor is Amelia Au whose number is 703-308-6604, group fax is 703-872-9306, and Tech center 2600 customer service office number is 703-306-0377.

A handwritten signature in black ink, appearing to read 'SAMIR AHMED', with a large, sweeping loop extending from the end of the signature.

**SAMIR AHMED  
PRIMARY EXAMINER**

Handwritten initials 'AB' in black ink.

Anand Bhatnagar

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February 21, 2005